

**IN THE MATTER OF:  
GREENLEIGH AT CROSSROADS  
1<sup>st</sup> DEVELOPMENT PLAN  
REFINEMENT**

**15<sup>th</sup> Election District  
6<sup>th</sup> Council District**

**RE: Request for Limited Exemption  
under BCC, § 32-4-106(b)(2)**

**\* BEFORE THE  
\* BOARD OF APPEALS  
\* OF  
\* BALTIMORE COUNTY  
\*  
\* Case No. CBA-20-005  
\*  
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\* \* \* \* \*

**OPINION**

This matter comes to this Board of Appeals (“Board”) as an appeal of two (2) approval letters issued by the Director of Permits, Approvals and Inspections (“PAI”). The letters involve a single request for limited exemption under § 32-4-106(b)(2) of the Baltimore County Code (“BCC”) for a refinement to the approved Development Plan for the Greenleigh at Crossroads project. The first PAI approval letter was dated August 5, 2019 (the “First Letter”) and an appeal was filed by Marie McBride (the “Protestant”) on September 9, 2019 (the “First Appeal”). The second PAI letter was dated September 10, 2019 (the “Second Letter”) and an appeal was filed by the Protestant on September 11, 2019 (the “Second Appeal”).

Petitioner, Elm Street Development, Inc. (the “Petitioner”), filed a Motion to Dismiss both of the appeals with this Board. The Protestant filed an Opposition to the Motion, and a motions hearing was held before this Board on January 28, 2020. Petitioner was represented by Adam M. Rosenblatt, Esquire and Patricia A. Malone, Esquire of Venable LLP. The Protestant was represented by David K. Gildea, Esquire, of Smith, Gildea & Schmidt. At the conclusion of the hearing, this Board held a public deliberation. For the reasons stated below, this case will be dismissed.

**STATEMENT OF FACTS**

On May 7, 2019, the Development Review Committee (DRC) held a public meeting to consider the Appellee's request for limited exemption for a refinement to the Greenleigh at Crossroads Development Plan. On August 5, 2019, the Director of PAI issued the First Letter approving the limited exemption requested by the Petitioner. On September 9, 2019, the Protestant filed the First Appeal. The following day, on September 10, 2019, the Director of PAI issued the Second Letter, "revising and replacing" the First Letter and reiterating that the Appellee's request for limited exemption had been approved. The Protestant filed the Second Appeal on September 11, 2019, the day after the Second Letter was issued.

**LAW**

In order to streamline and facilitate the development process, the Director of PAI, under the authority granted in the BCC, created the DRC. The DRC is an informal group consisting of representatives of PAI, the Department of Public Works, the Department of Recreation and Parks, the Department of Environmental Protection & Sustainability, and the Department of Planning. The DRC is chaired by a representative of PAI. The DRC reviews proposed plans and formulates recommendations to the Director of PAI on requests for limited exemptions under BCC § 32-4-106(a) and (b). The DRC's recommendations are reviewed and either adopted, or not, by the Director of PAI. Decisions of the Director of PAI are final decisions, which are directly appealable to this Board under the holding in *UPS v. People's Counsel*, 336 Md. 569 (1994).

Appeals to this Board are governed by Rule 3 of the Rules of Practice and Procedure of the Baltimore County Board of Appeals. Rule 3.C states as follows:

Unless otherwise provided for by statute, all appeals to the board of appeals, subject to and limited by statutory authority to hear appeals, shall be made within thirty (30) days from the date of the final action appealed.

Additionally, BCC § 32-3-401 states that a person feeling aggrieved by a decision of the Director of PAI may appeal the decision or order to this Board. Notice of the appeal shall be filed, in writing, “within 30 days after the final decision.” BCC § 32-3-401(c). This section has been held to authorize the appeal of a limited exemption approval if filed within thirty (30) days of the issuance of the decision. *Beth Tfiloh Congregation of Balt. City, Inc. v. Glyndon Cmty. Ass’n*, 152 Md. App. 97, 108 (2003). Once an appeal is noted, an agency’s ability to revise its decision is “immediately suspended until the appeal is resolved.” *Eisenbeiss v. Jarrell*, 52 Md. App. 677, 683 (1982).

### **DECISION**

#### **I. THE FIRST APPEAL IS UNTIMELY AND MUST BE DISMISSED**

The First Letter was issued on August 5, 2019 and the First Appeal was filed on September 9, 2019, thirty-five (35) days after the First Letter was issued. This appeal was not filed within thirty (30) days as required by the plain language of Rule 3 of the Rules of Practice and Procedure of this Board, and BCC § 32-3-401. These sections provide that an appeal “shall” be filed within thirty (30) days, and the word shall “shall have a mandatory effect and establish a requirement.” BCC § 1-2-209. It is well settled that where a notice of appeal is not timely filed, the appellate tribunal has no authority to decide the case. *United Parcel v. People's Counsel, supra*, 336 Md. at 580; *Dabrowski v. Dondalski*, 320 Md. 392, 397-398 (1990); *Walbert v. Walbert*, 310 Md. 657, 662 (1987).

Counsel for the Protestant made reference to repeated, unsuccessful emails and phone calls that were placed by his staff to try to obtain a copy of the First Letter so that it could be appealed. While counsel’s frustration with PAI is certainly understandable, there is no statutory obligation to provide notice directly to a Protestant. *Md. Metals, Inc. v. Harbaugh*, 33 Md. App. 570, 575-576 (1976). Accordingly, the First Appeal was untimely and must be dismissed.

## **II. THE SECOND APPEAL MUST ALSO BE DISMISSED**

Under Maryland law, the filing of an appeal divests an administrative agency of jurisdiction to reconsider its decision. *Lawrence N. Brandt, Inc. v. Montgomery Cnty. Comm'n on Landlord-Tenant Affairs*, 39 Md. App. 147, 160 (1978) (adopting 73 C.J.S. Public Administrative Bodies and Procedure § 156) (holding that an agency may only rehear and reconsider a decision "before an appeal from its original order"); see also *Sizemore v. Town of Chesapeake Beach*, 225 Md. App. 631, 665 n.14 (an "administrative body may not reconsider an order after an appeal has been lodged) (citing *Lawrence N. Brandt Inc.*, 39 Md. App. at 160). An agency or court from which an appeal has been taken is "prohibited from re-examining the decision or order upon which the appeal was based." *Nina & Nareg, Inc. v. Movahed*, 369 Md. 187, 200 (2002); see also *Pulley v. State*, 287 Md. 406, 417 (1980). Once an appeal is noted, an agency's ability to revise its decision is "immediately suspended until the appeal is resolved." *Eisenbeiss v. Jarrell*, 52 Md. App. 677, 683 (1982).

The Second Letter dated September 10, 2019 states that it "**replaces and revises** the administrative order and decision previously issued on this matter" (emphasis added). The First Appeal, filed September 9, 2019, had already been filed to "the administrative order and decision previously issued on this matter." Accordingly, this matter was already within the jurisdiction of this Board and could not be "revised and replaced" by the Director of PAI on September 10, 2019.

Furthermore, the fact that the Second Letter states that it is a final action "does not automatically make it an appealable decision." *Beth Tfiloh, supra*, 152 Md. App. at 114-15. As the appellate courts have consistently held, "[the] question [of] whether a judgment, order, or decree is final and appealable is not determined by the name or description which the court below gives it, but is to be decided by the appellate court on a consideration of the essence of what is done

thereby.” *Art Wood v. Wiseburg*, 88 Md. App. 723, 732-33 (1991); *Meadows of Greenspring Homeowners Ass'n v. Foxleigh Enters.*, 133 Md. App. 510, 518 (2000).

The Second Letter was issued after the First Letter had already been appealed, and it did not grant or deny any new relief -- it simply restated the relief that was already granted in the First Letter. For all of these reasons, the Second Appeal must also be dismissed.


**ORDER**

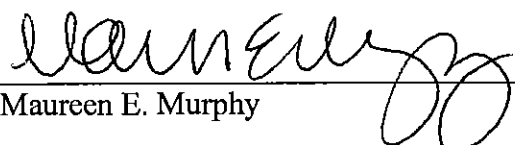
**THEREFORE**, it is this 27<sup>th</sup> day of April, 2020, by the Board of Appeals for Baltimore County,


**ORDERED**, that the appeals of the August 5, 2019 and September 9, 2019 letters of the Director of PAI are hereby **DISMISSED** for the reasons set forth herein.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through 7-210 of the Maryland Rules.

**BOARD OF APPEALS OF  
BALTIMORE COUNTY**

  
\_\_\_\_\_  
William A. McComas, Chair

  
\_\_\_\_\_  
Maureen E. Murphy

  
\_\_\_\_\_  
Deborah C. Dopkin



## Board of Appeals of Baltimore County

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April 27, 2020

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RE: In the Matter of: *Greenleigh at Crossroads*  
*1<sup>st</sup> Development Plan Refinement*  
Case No.: CBA-20-005

Dear Counsel:

Enclosed please find a copy of the final Opinion and Order issued this date by the Board of Appeals of Baltimore County in the above subject matter.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*, **WITH A PHOTOCOPY PROVIDED TO THIS OFFICE CONCURRENT WITH FILING IN CIRCUIT COURT.** Please note that all Petitions for Judicial Review filed from this decision should be noted under the same civil action number. If no such petition is filed within 30 days from the date of the enclosed Order, the subject file will be closed.

Very truly yours,

A handwritten signature in cursive script that reads "Sunny Cannington Hay".

Krysundra "Sunny" Cannington  
Administrator

KLC/taz  
Enclosure  
Duplicate Original Cover Letter

c: David Murphy/Elm Street Development  
Thomas Pilon/Edward St. John, LLC  
Michael Caruthers/Middle River Business Center, LLC  
Marie S. McBride  
C. Pete Gutwald, Director/Department of Planning  
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